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July 28, 1998

JUL 28 1998

Magalie R. Salas, Esq.

Secretary

Federal Communications Commission

1919 M Street, N.W.

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WT Docket No. 94-147

Dear Ms. Salas:

Transmitted herewith, on behalf of James A. Kay, Jr., is an original and six (6) copies of his Supplement to Motion to Recuse Presiding Judge.

Should the Commission have any questions with respect to this filing, please communicate with the undersigned.

Sincerely yours,



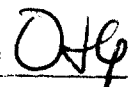
Aaron P. Shainis

Counsel for

JAMES A. KAY, JR.

Enclosure

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JUL 28 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) WT DOCKET NO. 94-147
)
JAMES A. KAY, JR.)
)
Licensee of one hundred fifty two)
Part 90 licenses in the)
Los Angeles, California area.)

To: Administrative Law Judge
Richard L. Sippel

**SUPPLEMENT TO MOTION TO
RECUSE PRESIDING JUDGE**

James A. Kay, by his attorneys, submits his supplement to the July 22, 1998 "Motion to Recuse Presiding Judge." The instant supplement is filed as a result of matters which occurred at the July 23, 1998 prehearing conference.¹ As will be presented herein, further grounds are present which require the Presiding Judge to recuse himself. In support, the following is demonstrated:

Background

On June 30, 1998, the Presiding Judge initiated a telephone conference call.² Counsel for all parties were present. During the course of the conference call the Presiding Judge, totally on his own, asked whether the holding of hearing sessions on the Rosh Hashana holiday would impact counsel.³ Counsel replied that it would and advised the Judge that he had been reluctant to bring up the matter, since the procedural schedule had been established prior to his having entered an appearance. Even

¹ A copy of the transcript is attached hereto as Attachment A.

² At the inception of the conference call, counsel for Kay requested that all matters to be discussed should be done on the record before a court reporter. The Presiding Judge ignored this request.

³ The Presiding Judge confirmed that the inquiry concerning religious observance were initiated sua sponte. (Tr. 423).

though counsel had not requested any accommodation for the Jewish holiday, the Judge stated that he would not have a hearing session on September 21, 1998. Counsel then pointed out to the Presiding Judge that the holiday was over at sundown on September 22, 1998. The Presiding Judge challenged counsel on his assertion that it was a two (2) day holiday citing his (i.e. the Judge's) calendar. He further indicated that the hearing session would not be suspended for two (2) days.⁴

July 23, 1998 Conference

At the July 23, 1998 conference, the Presiding Judge attempted to clarify his "situation or position" with respect to the matter. (Tr. 422). Independent of any request by counsel, the Judge ruled that if necessary hearing sessions would not be held on September 21 or 22, 1998. (Tr. 422). See also Order, FCC 98M-99, released July 27, 1998 (Attachment B). If the Presiding Judge had stopped at that point, there would have been no problem. However, in a classic case of "Jew Baiting"⁵ the Presiding Judge displayed his bias and prejudice. As will be demonstrated, the Presiding Judge has gone beyond insensitivity and has crossed over the line into the land of prejudice.⁶

The following question was directed by the Presiding Judge to counsel for Kay:

"Now, it was suggested to me that I ask you as to whether or not you are practicing as Conservative or Orthodox, if I have the universe correct? Can you confirm that?" (Tr. 425)

In response, counsel asked the Judge who had suggested that he ask the question (Tr. 425). The Presiding Judge refused to identify the name of the individual.⁷ (Tr. 425). However, the Judge did amplify his answer as follows:

⁴ Counsel had made no request for any accommodation.

⁵ The only purpose of the Judge's actions was to single counsel out and to embarrass him because of his religion. Thus, the Judge "baited" counsel because of his religious beliefs.

⁶ The actions of the Presiding Judge are an embarrassment to the agency and cannot be tolerated.

⁷ The failure of the Judge to identify the individual raises serious questions in and of itself. The refusal of the Judge to identify who suggested the question could conceivably be motivated because

“Well, it was suggested to me by somebody who was conservative, and he said, you know, that I would be entitled to get a clarification to that extent.” (Tr. 426).

Counsel advised the Judge that he was insulted by the question (Tr. 426); that the Judge did not have any right to the information (Ibid); and that to the best of counsel’s knowledge he did not know of anyone else in any hearing who had ever been asked about their religious convictions. (Ibid). Counsel further advised the Judge that he resented the question and that counsel was insulted (Ibid). Counsel also advised the Judge that in all the years he had been practicing he had never been asked what his religious convictions were (Ibid). Counsel did, however, answer the question. (Ibid).

Counsel asked the Judge why he asked the question (Tr. 427). The Judge again responded that the question had been suggested to him by an unnamed source (Tr. 427).

Counsel pointed out to the Judge that in the [June 30, 1998] telephone conference he had advised the Judge that it (Rosh Hashana) was a two (2) day holiday and that counsel observed both days (Tr. 427). The Presiding Judge responded, “You did say that, yes, sir” (Tr. 427).

Counsel reiterated to the Judge that his question displayed insensitivity and that counsel felt ridiculed (Ibid). Counsel complained to the Judge that he was being singled out (Tr. 427-428). In addition, counsel stated that he believed the Judge was challenging his religious convictions (Tr. 428).

A review of the foregoing facts aptly illustrates that once again the Presiding Judge has displayed ignorance and insensitivity. However, here, he has also added to the foregoing blatant anti-Semitic conduct. The Judge’s assertion that he was asking the question solely to facilitate scheduling (Tr. 426) is simply not credible. The Judge had already volunteered to accommodate counsel’s observance of the Rosh Hashana holiday. Thus, no legitimate purpose was served by asking any

[continued...] the Judge had an impermissible ex-parte contact. Furthermore, the Judge, mysteriously, felt compelled to follow this “suggestion.” Thus, questions are also raised as to whether the Judge is acting as an independent decision maker or is merely a “puppet” for another party.

additional question. Moreover, even if the Judge had not volunteered any accommodation, the question would still have been improper.

Counsel's attendance at the hearing conference was in a representative capacity. See Transcript at pp. 418, 420. Thus, the impact of the Judge's biased question also directly affects Mr. Kay, counsel's client. Specifically, if the Presiding Judge is unwilling to accept counsel's assertions relative to his religious convictions, it is doubtful that the Judge will be able to give any credence to counsel's substantive arguments on the merits of the case. Bias by a Judge is always inappropriate and, once shown, cannot be contained. In this context, it is also repugnant.

The question concerning Counsel's religious convictions is improper for any number of reasons. First, the Judge is an employee of the Federal Communications Commission. No Commission application asks questions pertaining to the religious beliefs of an applicant. Any such attempt to pose such a question would violate an applicant's First Amendment rights. Clearly, if the religious beliefs of an applicant or its counsel are not considered in the licensing process, they also cannot be considered in the revocation process.

Constitutional Restrictions

Next, the Judge's inquiry violates the constitutional and statutory rights of Kay and his counsel. The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." As Justice Black stated in Everson v. Board of Education, 330 U.S. 1, 15 (1947):

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion aid all religions, or prefer one religion over another.

Earlier in Davis v. Beason, 133 U.S. 333, 342 (1890), the Supreme Court stated:

[The First Amendment] was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relation to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper....

In an unbroken line of precedent, the Supreme Court has struck down federal enactments or actions that inhibit the practice of religion. *e. g.*, Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 340-46 (1987) (Free Exercise Clause prohibits federal agency from second guessing how church carries out its religious mission); Thomas v. Review Bd. of the Indiana Employment Security Div., 450 U.S. 707, 613-16 (1981) (impermissible for courts to reject religious freedom claim by Jehovah's Witness because other Jehovah's Witness did not share his sincere religious belief that working in a weapons factory was wrong); Presbyterian Church v. Mary Elizabeth Blue Hull Presbyterian Church, 393 U.S. 440, 450 (1969) (observation and interpretation of particular church doctrines protected from scrutiny); Fowler v. Rhode Island, 345 U.S. 67, 70 (1953) (no business of judges to question what are legitimate practices of a particular religious group). The First Amendment prohibits all federal officials, including administrative law judges, from burdening the free exercise of religion by any United States citizen whether he or she professes to be a member of the Seventh Day Adventists, the Dutch Reform Church, or a Jew.

Thus, under long settled Constitutional First Amendment tenets, Kay's counsel, as a citizen of the United States, is protected from having the degree or extent of his religious beliefs challenged or even questioned in any judicial capacity by an agent of the Federal Government. Yet here, counsel was placed in the position of either refusing to answer a Judge's directive or having his religious beliefs questioned.

Statutory Restrictions

1. The Religious Freedom Restoration Act

Congress has now codified these constitutional protections in the Religious Freedom Restoration Act of 1993. Pub. L. No. 103-141, #2, 1993 U.S.C.C.A.N. (107 Stat.) 1488, 1488 (codified as amended at 42 U.S.C. #2000bb et seq.). This statute applies to all federal employees, including FCC Administrative Law Judges, See City of Boerne v. P.F. Flores, ___ U.S. ___, 117 S.Ct. 2157 (1997) (holding statute unconstitutional as applied to state employees). This statute affirmatively protects the right of the United States citizens to exercise and hold religious beliefs free from question or challenge by federal officials. The Presiding Judge's explicit challenge to the good faith religious practices asserted by Kay's counsel is a direct interference with the free exercise of his religion and faith and is a type of substantial burden upon the exercise of his religion that violates the Religious Freedom Restoration Act. 42 U.S.C. #2000bb-I(a). Nor can this substantial burden be excused by a compelling federal government interest. The Presiding Judge voluntarily provided the religious accommodation before questioning the sincerity of counsel's holiday observance.⁸ There is no compelling federal governmental interest in the Presiding Judge's gratuitously challenging a good faith expression of religious belief and practice on grounds of "expedition" where the Presiding Judge had already accepted the minimal two-day delay occasioned by counsel's observation of Rosh Hashana.

2. The Civil Rights Act, as Amended in 1972.

In 1972, Congress amended the Civil Rights Act of 1964 to prohibit religious discrimination

⁸ The ignorance and bias of the Presiding Judge is particularly egregious because a reform Jew could also observe two (2) days for the Rosh Hashana holiday. The point is that it is not for federal judges to test the religious convictions of applicants and their counsel.

in all aspects of federal sector and private employment. This prohibition is expressed in terms of disparate treatment; that is conduct for or against workers because they are Protestant, Roman Catholic, Muslim or Jewish. e.g., Smith v. University of North Carolina, 18 FEP 913 (1978). By religion, Title VII includes not only these and other religious beliefs but also “all aspects of religious observance and practice.” Section 701(j). Thus, treating persons who profess adherence to Jewish beliefs and questioning the basis of their observance of holy days treats these persons differently from atheists or members of other religious faiths and is a per se violation of this broad public policy to end religious discrimination in employment. Stoler v. Marsh, 682 F.2d 971 (D.C. Cir. 1982). There is no basis on the record of this proceeding or elsewhere for the Presiding Judge to challenge the religious basis for counsel’s two-day observance of Rosh Hashana. In an employee-employer relationship, counsel would obtain compensatory and punitive damages for this type of intentional discrimination.

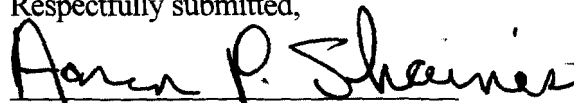
While the Presiding Judge is not counsel’s employer, this Judge, or for that matter, any judicial decision-maker, occupies a superior position vis-à-vis attorneys who appear in court in subordinate roles as officers of the court. The judging function necessarily renders counsel vulnerable to conduct by the Judge in the same way that employees are vulnerable to action against them by their employers. Here, counsel’s professional ability to represent his client and function ethically as an officer of the court has been jeopardized by the Presiding Judge’s discriminatory treatment of counsel’s religious beliefs and observances. The Presiding Judge, like employers, has a public policy obligation to insure that the conduct of his judicial duties is fully free of discriminatory conduct. Whenever as here, this obligation is breached, the Presiding Judge must recuse himself. The Presiding Judge’s actions cannot but have a chilling effect on the entire proceeding and cause distrust and resentment by counsel and Mr. Kay.

The Presiding Judge's conduct is reprehensible. It is hardly the type of conduct one has the right to expect from a Judge. The Judge's singling out counsel and questioning his religious observances served no purpose other than to display insensitivity, ignorance, and anti-Semitic conduct. It also embarrassed counsel. This conduct is clearly grounds for the Judge to recuse himself. Even if the Judge should recant and attempt to explain, the humiliation and anger reasonably felt by counsel and Mr. Kay shall remain. Thus, the Judge with or without "an explanation" should recuse himself.⁹

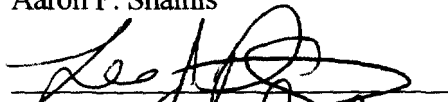
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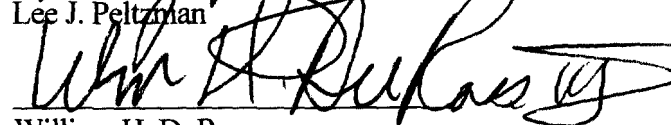
Respectfully submitted,



Aaron P. Shainis

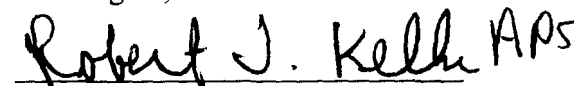


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William H. DuRoss

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Robert J. Keller

⁹ A declaration of counsel is attached to the instant submission (Attachment C).

ATTACHMENT A

FEDERAL COMMUNICATIONS COMMISSION

In Matter of:)	WT DOCKET No.: 94-147
)	
JAMES A. KAY, JR.)	
)	
Licensee of one hundred)	
fifty-two Part 90 licenses)	
in the Los Angeles,)	
California area.)	

Volume: 8
Pages: 418 through 431
Place: Washington, D.C.
Date: July 23, 1998

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Matter of:)	WT DOCKET No.: 94-147
)	
JAMES A. KAY, JR.)	
)	
Licensee of one hundred)	
fifty-two Part 90 licenses)	
in the Los Angeles,)	
California area.)	

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Thursday,
July 23, 1998

The parties met, pursuant to the notice of the
Judge, at 9:03 a.m.

BEFORE: HON. Richard L. Sippel
Presiding Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

AARON P. SHAINIS, ESQ.
ROBERT J. KELLER, ESQ.
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On Behalf of the Federal Communications
Commission:

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P R O C E E D I N G S

1 THE COURT: Please be seated. We're on the
2 record? It's been a while since we met. Have you all
3 identified yourselves for the record, and does the reporter
4 have your name?

5 MR. SCHAUBLE: We haven't been on the record to
6 identify ourselves.

7 THE COURT: Did you give this reporter your name
8 before you went on the record?

9 MR. SCHAUBLE: Yes, Your Honor.

10 THE COURT: Okay. To the reporter, do you have
11 all the names that you need?

12 COURT REPORTER: Yes, I do.

13 THE COURT: Thank you. Okay.

14 This conference was called by my Order 98M-98,
15 which was faxed to counsel on Monday, July 20th. And as the
16 Order reads: "The Presiding Judge requests the counsel for
17 James A. Kay, Jr. confirm on the dates in the Los Angeles
18 phase of the hearing that he will be absent, and whether his
19 co-counsel will appear and participate, so that the Los
20 Angeles hearing could be conducted without interruption on
21 the dates proposed by counsel for the Los Angeles session."
22 And those dates are September 15th to September 24th; and
23 alternatively, the Presiding Judge will consider a two-day

1 hiatus for the observance by Mr. Kay's counsel of a
2 religious holiday.

3 I guess the first question I have of Mr. Shainis -
4 - would you confirm the dates that you will be absent from
5 the hearing?

6 MR. SHAINIS: Yes, Your Honor. I will be absent
7 from the hearing on September 21st and September 22nd.

8 THE COURT: Okay. And will Mr. Kay be represented
9 by other counsel in your absence?

10 MR. SHAINIS: Your Honor, the -- to answer your
11 question, I'd like to digress just for a moment, if I might.

12 THE COURT: Well, I wonder if you could answer the
13 question, and then, you know, if you want -- if you want to
14 say more.

15 MR. SHAINIS: I don't know, Your Honor.

16 THE COURT: All right. That's fair. Is there
17 anything more that you wanted to add to that?

18 MR. SHAINIS: Yes. It depends upon where we are
19 in the hearing as to the duties that would be involved in
20 either cross examining a witness or presenting our direct
21 case. So without violating any type of privilege, there is
22 a reason I am representing Mr. Kay in this proceeding; and
23 Mr. Kay has a right to have whom he would like to represent
24 him. I don't think there is any dispute on that.

25 THE COURT: Now, I don't think anybody's going to

1 dispute you on that. It's just that I do -- you do have co-
2 counsel on the case. Is that correct?

3 MR. SHAINIS: I understand that, Your Honor.

4 THE COURT: Am I correct in that? I wanted to be
5 sure.

6 MR. SHAINIS: Yes, you are correct.

7 THE COURT: And that would be Mr. Keller.

8 MR. SHAINIS: That is correct.

9 THE COURT: And Mr. Keller is right here?

10 MR. KELLER: Yes.

11 THE COURT: All right. I just wanted to be sure.
12 Go ahead. I'm sorry.

13 MR. SHAINIS: I don't know what duties -- whether
14 the duties that I have undertaken in the hearing I would --
15 if we get to a part of the hearing where I am supposed to be
16 -- I don't know what witnesses there are going to be at that
17 particular time. I don't know whether the Bureau will have
18 finished its case at that particular time. So it's
19 difficult for me to say to you that Mr. Keller would all of
20 a sudden be able to pick up the hearing at that point.

21 THE COURT: All right. So you just don't know at
22 this particular point as to whether or not -- well, you've
23 answered the question. I'm just trying to rephrase what you
24 have already said, you don't know. All right.

25 Well, I am prepared -- I am prepared to put this

1 case in a hiatus status for two days. I am prepared to do
2 that. I obviously -- if within the confines of a religious
3 observance -- if there can be testimony -- if we can conduct
4 business on one or both of those days, of course that would
5 be my preference. But only for purposes of assuring that
6 the case gets completed on time, and also for purposes of
7 not having to put additional workloads on people
8 participating in this at other times; and by that I mean
9 we'll just go a little bit later in the evening in the
10 earlier week and, you know, we can start on Monday instead
11 of on Tuesday, you know, we'll deal with it. We'll deal
12 with it. Of course, the more notice that I have and that
13 the Bureau counsel has, the better we can be prepared for
14 the contingencies.

15 MR. SHAINIS: We understand that, Your Honor.

16 THE COURT: But Mr. Kay will be represented
17 throughout this hearing by whichever counsel he chooses to
18 be represented by on every day of the hearing.

19 MR. SHAINIS: Thank you, Your Honor.

20 THE COURT: Now, I want to -- this is for purposes
21 of clarifying my situation or position with respect to this
22 issue of the religious observance. I don't want to say it's
23 an issue but -- the matter -- if you want to say it that
24 way. But as we all know, the hearing dates of September 15
25 through September 24 were given to me by Bureau counsel and

1 formal counsel for Mr. Kay -- Mr. Barry Friedman -- and that
2 was in March of 1998 before -- Mr. Shainis, before you
3 entered your appearance. And when I saw those dates, I
4 recognized from my calendar that one of the days was a Rosh
5 Hashanah observance; but since these were the dates that
6 were given to me, I just assumed it was all right with
7 everybody. I mean I say all right -- I mean that we would
8 be going forward and having hearings on that day; and that
9 by doing so, it would not be interfering or being
10 insensitive to anyone's observance of a religious holiday.

11 Now, upon your appearance in the case, I took it
12 upon myself to raise with you the question of your
13 participation on Rosh Hashanah. And in that effort on my
14 part, I did two things. I looked at the calendar -- my
15 calendar -- which is a government issued calendar. And I'd
16 like to pass to counsel copies of my September calendar. As
17 they appear in my book, I have masked out notations that I
18 have made for other dates, because I just don't think that
19 you are going to be interested in seeing what I am doing on
20 other dates. But I have -- I want you to just be clear in
21 understanding what I am trying to say here: that it is only
22 on September the 21st, a Monday, which Rosh Hashanah appears
23 as a day of observance. With respect to business days, it's
24 true, the 20th -- Sunday evening -- is when Rosh Hashanah
25 begins. But I'm talking about business days. So, when I

1 came to you, that's what I thought the situation to be.

2 Now, in addition to looking at my calendar,
3 however, I did confirm -- I thought I had confirmed fully
4 with a person who does honor the -- observe the Rosh
5 Hashanah holiday. So when I came to you with this situation
6 in the conference call of June 30th, I had it -- I thought I
7 had it established in my mind that I would have to make an
8 accommodation for a possible one-day hiatus in consideration
9 of the observance. So when I heard that it was two days --
10 that I would have to perhaps deal with a two-day hiatus, I
11 was not prepared for that. And that's why I responded
12 that -- or I took the position that my calendar says only
13 one day.

14 And it was after that day -- it was after that
15 situation, or after that presentation, that I had confirmed
16 with another person who observes the holiday. That was
17 after your filing of July 16th. And I asked that person
18 what the situation was; and he explained to me that he
19 observed it on two days; and he explained to me why. And he
20 explained to me that -- and I am paraphrasing now, but I
21 think I have it accurately -- that persons who are of the
22 Reform Judaism persuasion observe it for one day; whereas
23 persons who are Conservatives or Orthodox, observe it two
24 days. And that was the first time that I had known of that
25 distinction.

1 So, having heard that, you know, I became
2 obviously more informed on the issue, and thus I called this
3 hearing today -- this conference today, I am sorry -- to
4 clarify the situation as best I can. I certainly believe
5 that the way I entered upon the subject was -- I think it's
6 clear from these circumstances that there was no intention
7 to ridicule anybody's religious beliefs, or that I had
8 displayed an insensitivity. I certainly will acknowledge
9 that I did have ignorance of the full scope of the situation
10 at the time that I first raised it with you. But having
11 cleared that up, and trying the best I can today, to try and
12 clear it up even further with respect to your participation
13 and my assurance that you and Mr. Kay will be -- that your
14 observance, however, that comes out will be determinative of
15 whether or not we are in trial on September 21st or
16 September 22nd.

17 Now, it was suggested to me that I ask you as to
18 whether or not you are practicing as Conservative or
19 Orthodox, if I have the universe correct? Can you confirm
20 that?

21 MR. SHAINIS: Who suggested that?

22 THE COURT: I don't -- I'm not going to identify
23 who it was. But do you have any objection to telling me as
24 to whether or not you are of one or the other persuasion; or
25 is there a third persuasion?

1 MR. SHAINIS: I feel insulted by your asking the
2 question, but I will tell you. I don't think you have any
3 right to the information. I don't think any -- I don't know
4 of anyone else in any hearing who has ever been asked what
5 their religious convictions are. But I am Conservative.

6 THE COURT: All right.

7 MR. SHAINIS: But I resent the asking of the
8 question.

9 THE COURT: Well, it was suggested to me by
10 somebody who was Conservative, and he said, you know, that I
11 would be entitled to get a clarification to that extent. It
12 was not meant as an insult.

13 MR. SHAINIS: It was taken as an insult, Your
14 Honor.

15 THE COURT: No, it's not meant that way. The
16 record is now clear.

17 MR. SHAINIS: I don't know of any other judge in
18 any proceeding -- I don't think -- who has been -- I have
19 never been asked in all the years I have been practicing
20 what my religious convictions were.

21 THE COURT: Well, it's not because I have any
22 question about your religious conviction. I am simply
23 trying to schedule an event. That's all I am trying to do.

24 MR. SHAINIS: I mean, Your Honor --

25 THE COURT: That's all. I can't say anything

1 more, Mr. Shainis. There is nothing more I can say. I am
2 not -- I have never had any intention at all of ridicule or
3 insensitivity. I'm simply trying to schedule a hearing.
4 That's all. And we -- you're going to be -- your
5 observances are going to be honored.

6 MR. SHAINIS: Then why -- why would you ask that
7 question?

8 THE COURT: Well, it was suggested to me that --
9 that I do for purposes of --

10 MR. SHAINIS: I pointed out to you in the --
11 which I don't have a transcript to back it up of course.

12 THE COURT: No, I understand what you told -- I'm
13 sorry. You go ahead.

14 MR. SHAINIS: But I pointed out to you that it's a
15 two-day holiday; and I pointed out to you in that conference
16 I observe both days.

17 THE COURT: You did say that, yes, sir.

18 MR. SHAINIS: But now for you to ask me that
19 question again, I find it insulting.

20 THE COURT: Well, it was not intended --

21 MR. SHAINIS: I don't think you have a right to
22 the information --

23 THE COURT: I simply asked --

24 MR. SHAINIS: It displays insensitivity. I feel
25 ridiculed. Why am I being singled out?

1 THE COURT: You are not being singled out. That's
2 not true.

3 MR. SHAINIS: Au contraire. I am being singled
4 out.

5 THE COURT: It's a scheduling issue. That's all
6 it is. I have but five days --

7 MR. SHAINIS: You already announced that you were
8 not going to have hearings on those two days. We could move
9 on to another subject.

10 THE COURT: All right. Then, if I have offended
11 you --

12 MR. SHAINIS: I feel like I have been challenged.

13 THE COURT: Well, I didn't intend it that way, and
14 I am sorry that you feel that way. I certainly am -- we
15 certainly would want to move on to another area. And I
16 appreciate your candor.

17 Now, with respect to further scheduling, I am just
18 going to say the date for the submission of subpoenas will
19 be extended until August 7th. The trial briefs will be
20 exchanged on July 29th as scheduled, with copies submitted
21 to me. And I am aware of the fact -- very much aware of the
22 fact -- that there has been a motion filed yesterday for
23 recusal. The copy delivered yesterday, which I took home
24 with me, had no page number 6 in it, so --

25 MR. SHAINIS: That was corrected, Your Honor.

1 THE COURT: May I finish?

2 MR. SHAINIS: Certainly.

3 THE COURT: So I am not completely apprised of its
4 contents. The motion to the Court will be very carefully
5 reviewed by myself, and will be ruled upon. And as has been
6 my practice, my legal technician will either fax or e-mail a
7 courtesy copy of my ruling to counsel on the date of its
8 issuance. And that's -- you know, that basically -- that's
9 all that I have. We are in recess until August 3rd unless
10 there is an order otherwise.

11 MR. SCHAUBLE: Your Honor, I'd like to add one
12 thing, if I might.

13 THE COURT: Yes, sir. I'm sorry. You go ahead,
14 sir.

15 MR. SHAINIS: The motion -- you are absolutely
16 correct -- the copy you were served with did not have page
17 6. That was corrected before the close of business
18 yesterday. And I personally brought it over and put it in
19 your box.

20 THE COURT: All right. Well, I didn't check my
21 box this morning. I was attending to this preparation and
22 other things. But I did take the copy home with me last
23 night that you had left with my legal tech --

24 MR. SHAINIS: Well, but I personally -- I guess it
25 was 5:15 yesterday -- brought over another copy and put it

1 in your box.

2 THE COURT: All right. Well I didn't check my box
3 last night. I didn't check it this morning. But my legal
4 tech gave me the copy last night. I put it in my -- I took
5 it home with me and read it, and it didn't have a page 6.
6 That's all I am saying. You have clarified the record. You
7 have certainly done your job to correct that.

8 MR. SCHAUBLE: Your Honor, one procedural --

9 THE COURT: Yeah.

10 MR. SCHAUBLE: Do you have the admissions session
11 starting on the 3rd or the 4th?

12 THE COURT: I think I -- I'm sorry -- the 4th.

13 MR. SCHAUBLE: I don't have the order, but my
14 recollection was just that the admissions session started on
15 the 4th.

16 THE COURT: Yeah.

17 MR. KELLER: It now goes to the 7th, I think?

18 THE COURT: No, the 7th is the submission -- let
19 me go back. I'll go back to the order. It's 98M-4 is the
20 Order. On July 29th, okay, trial briefs exchanged and
21 hearing subpoenas submitted. I'm saying the subpoenas can
22 wait until the 7th of August. The admissions session, and
23 you are right, Mr. Schauble, it's from August 4 to 5.

24 MR. KELLER: But you put out an order -- I think
25 it may have been the same order that set this conference --

1 that extended the admissions session by two more days, I
2 believe.

3 THE COURT: Oh -- well, it would not -- no, it
4 would -- see, I originally had planned it, Mr. Keller, for
5 August 4 to 5; but in light of the volume of the documents,
6 it would be extended to the 6th and the 7th if you need that
7 time. So it would still be starting on the 4th. That's a
8 fair question.

9 The trial briefs themselves, however, will be
10 exchanged on July 29th. All right. Does everybody
11 understand that?

12 MR. SCHAUBLE: Yes, Your Honor. Thank you.

13 THE COURT: Okay. All right. Again, I extend my
14 sincere apologies for any ill feelings that I have caused in
15 my ignorance; but I am doing what I think is what I need to
16 do to be sure that this record is completed; and that the
17 proceeding goes forward in as timely a fashion as I can
18 manage it. I'm just trying to do the best I can.

19 We are in recess then, until August 4, again,
20 unless ordered otherwise. Thank you very much.

21 (Whereupon, at 9:23 a.m., the hearing in the
22 above-entitled matter was adjourned.)

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